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Studios Inc.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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METRO-GOLDWYN-MAYER STUDIOS	:
INC.,	:
	:
Plaintiff,	: 07 Civ. 2918 (DAB)
	:
-against-	: (ECF Case)
	:
TPS GESTION, S.A., TPS SOCIÉTÉ EN NOM	: DECLARATION OF MICHELINE
COLLECTIF, CANAL + FRANCE S.A., and	: DONJACOUR IN OPPOSITION TO
GROUPE CANAL + S.A.	: DEFENDANTS'S MOTION TO DISMISS
	: COMPLAINT
	:
Defendants.	:
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Micheline Donjacour declares as follows:

1. I am Senior Counsel of plaintiff Metro-Goldwyn-Mayer Studios Inc. ("MGM"). I make this declaration in opposition to the motion of defendants TPS Gestion S.A. ("TPS Gestion"), TPS Société en Nom Collectif ("TPS SNC"), Canal + France S.A. ("Canal+ France"), and Groupe Canal+ S.A. ("Groupe Canal+") to dismiss the complaint.

2. The purpose of this declaration is to put before the Court documents available from public sources which show that (a) defendants Canal+ France and/or TPS Gestion are the successors-in-interest to defendant TPS SNC, (b) defendant Groupe Canal+ has repeatedly done business in New York State, and (c) Studio Canal, a subsidiary of Groupe Canal+, which has also repeatedly done business in New York State, is a "mere department" of Groupe Canal+, and

its activities in New York are therefore to be attributed to Groupe Canal+ for jurisdictional purposes.

3. Vivendi S.A. (“**Vivendi**”) is the parent of Groupe Canal+. In its Annual Financial Report and Audited Consolidated Financial Statements for the Year Ended December 31, 2006 (“**Annual Report**”) (Exhibit 1), Vivendi states that it is the 100% owner of Groupe Canal+. Annual Report, p. 11. This also states that Groupe Canal+ owns 65% of defendant Canal+ France, which owns 100% of defendant TPS Gestion, which in turn “wholly-owns” defendant TPS SNC. *Id.*

4. On Vivendi’s website (www.vivendi.com), there is a press release, dated January 5, 2007 (Exhibit 2), which states that “Vivendi and Canal+ Group are pleased to announce that in line with previously publicized agreements, the pay TV businesses of Canal+ Group and TPS were *combined into Canal+ France*. . . Exclusively controlled by Vivendi through Canal+ Group, *the new entity* represents a media player comparable in size to the largest groups in Europe, one that can effectively operate on the new competitive playing field and energize the television market for the benefit of consumers.” (Emphasis added).

5. On Vivendi’s website, there is currently available a description of Groupe Canal+, stating that “Canal+ Group is the leader in pay-TV in France with more than 10 million subscriptions to a wide range of offers including Canal+, CanalSat and the former TPS (regrouped under a new entity, Canal+ France).” (Exhibit 3).

6. There is an internet-based research resource, called the Internet Movie Database, or “IMDB,” located at www.imdb.com, that compiles production, cast, and other information about specific motion pictures. In my experience, this resource is commonly relied on in the motion picture industry to research and locate such information, and is regarded by persons

working within the industry as accurate and up-to-date.

7. Among other information that is provided on IMDB is the identity of producers and co-producers of individual motion pictures, and, in many instances, the locations where such motion pictures were filmed.

8. According to IMDB, “Canal Plus” or “Canal+” is listed as producer or co-producer on the following recent motion pictures which used New York as a principal filming location: *Anything Else* (2003), a Woody Allen-directed film; *Brooklyn Babylon* (2001), which was shot in the Crown Heights neighborhood of Brooklyn; *Raising Victor Vargas* (2002), shot on the Lower East Side of Manhattan; and a number of non-English language films, including *Apartment #5C* (2002); *Parlez-moi d’amour* (2002); and *Stormy Weather* (2003). (Exhibit 4).

9. A New York-bylined article in the September 25, 2003 issue of *Variety*, the most widely-read newspaper in the entertainment field (Exhibit 5), reported that Canal Plus had renewed its contract with the National Basketball Association to broadcast NBA games in France through through the 2005 season. The article noted that “Canal Plus signed its first contract with the NBA in 1986.” To my knowledge, the NBA is headquartered in New York City.

10. As shown at Annual Report, p. 11, Studio Canal is a wholly-owned subsidiary of Groupe Canal+. The description of Groupe Canal+ on the Vivendi website (Ex. 3) states that “Canal+ Group is also a major producer of French pay-TV channels and, through StudioCanal, a significant contributor to the financing, acquisition and distribution of films.”

11. On its own website (www.canalplusgroup.com), Groupe Canal+ states (in rough translation from the French original) that on December 1, 1998, it “consolidated the entirety of its cinema, television, musical, video, etc., production within CANAL+ image which became STUDIOCANAL in 2000.” (Exhibit 6).

12. The IMDB service lists Studio Canal as the producer or co-producer of the following recent motion pictures which used New York as a principal filming location: *My Blueberry Nights* (2007), *The Interpreter* (2005), *Nowhere to Go But Up* (2003); *The Guru* (2002), *Harrison's Flowers* (2000) (which also lists Canal+ as a production company). (Exhibit 7).

13. There is a service analogous to IMDB, called the Internet Broadway Database (IBDB) (www.ibdb.com), which compiles production and cast information about plays and musicals that have been in Broadway or off-Broadway theaters in New York. According to IBDB, the production credits for the hit musical "*The Producers*," which ran in New York from April 19, 2001 through April 22, 2007, show that the musical was presented "by special arrangement with Studio Canal." Similarly, "*The Graduate*," which ran on Broadway from April 4, 2002 to March 4, 2003, was produced "by special arrangement with Studio Canal." (Exhibit 8).

14. Studio Canal has regularly used the New York Film Festival in order to promote its films in New York and the United States. For example, in September 2006, Studio Canal premiered and actively promoted "*Inland Empire*," a motion picture directed by famed director David Lynch, at the 44th New York Film Festival. "*Gabrielle*," a French-language film co-produced by Studio Canal, was shown at the 43rd New York Film Festival in 2005, and "*The Son's Room*," another Studio Canal co-production, was a selection at the 2001 New York Film Festival. Copies of press articles concerning Studio Canal's involvement in the New York Film Festival are provided at Exhibit 9.

15. At one point Studio Canal had issued stock to the public, but, as reported in a Vivendi press release dated June 28, 2001 (Exhibit 10), this stock was delisted "to foster

synergies between Studio Canal and Universal Studios within Canal+ Group.”

16. According to the Annual Report, the financial results of Studio Canal are consolidated with and presented as part of the financial statements of Vivendi. Annual Report, p. 161. In addition, the Annual Report, while it lists both long and short-term borrowing by the ultimate parent Vivendi, does not show that Studio Canal has independently borrowed for its operations or has banking relationships separate from Vivendi or Groupe Canal+. Annual Report, pp. 136-139.

17. In 2005, Olivier Courson, was then General Secretary (Secrétaire General) and General Counsel of Groupe Canal+, as shown in a May-June 2005 Investors Presentation prepared for Groupe Canal+. (Exhibit 11; *see also* Exhibit 13). He was named president of Studio Canal without relinquishing his existing positions with Groupe Canal+. Yet, as reported on January 31, 2007 in *Variety*, Mr. Courson also handled Groupe Canal+'s negotiations with the French Government and the French film industry, in order to win government approval of Groupe Canal+'s acquisition of TPS. (Exhibit 12).

18. In addition, Bertrand Meheut, who has submitted affidavits in this case, is chairman of the board not only of Groupe Canal+ but of Canal+ France and Studio Canal. *Who's Who In France* also states that Guillaume de Verges, who was managing director of Groupe Canal+, then became a consultant at Studio Canal. (Exhibit 13).

19. In its Investors' Presentation, Groupe Canal+ highlights the lack of independence of its subsidiaries, and the fact that it directs the business of those subsidiaries, including Studio Canal. Groupe Canal+ describes itself as “[a] key player in feature film production and distribution” (p. 3), mentions that under new management it achieved a “turnaround of all business units including STUDIOCANAL. . . .” (p. 7) and notes that Studio Canal is a “key

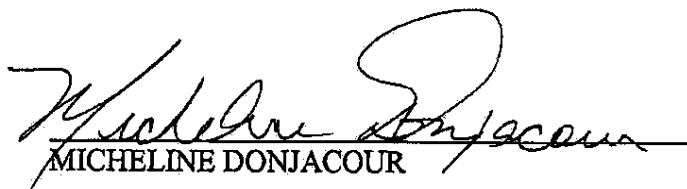
content provider for CANAL+ LE BOUQUET” [a range of satellite television channels operated by another Groupe Canal+ subsidiary] (p. 22). It also notes “operating links within the group,” including first exclusivity that Studio Canal has given to the Canal+ channel for pay TV rights on Working Title movies [Studio Canal partners with Universal in financing and distributing the films of Working Title], the right of first refusal to broadcast movies produced by Studio Canal partners, and close cooperation in Canal+ negotiated output deals with American movie studios (p. 53).

20. Finally, Studio Canal is regarded by others in the entertainment industry as a division of Groupe Canal+ and under the direct control of that entity. A May 18, 2007 article in *Variety* about Groupe Canal+ (Exhibit 14) reported:

Last time around, the company's plans for major-studio status were sacrificed in the short-lived merger of Vivendi and Canal Plus with Universal. In the wake of the break-up, Canal Plus Group was revealed to be \$5 billion in debt, and *Studio Canal, along with other divisions*, received a radical make-over, shrinking back to a streamlined Gallic business with a much-reduced budget.

Today, the Canal Plus Group has entered a new growth phase, and orders have been sent down from parent company Vivendi to maximize cash flow across its various businesses. (emphasis added)

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 13, 2007.


MICHELINE DONJACOUR